

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 5644 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

BILLAL SON OF MOHAMMED

GHANCHI

Versus

STATE OF GUJARAT

Appearance:

MR AD SHAH for Petitioners

MR BY MANKAD ADDL PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 23/09/1999

ORAL JUDGEMENT

#. Heard learned counsel Mr.Shah appearing for the petitioners and Mr.B.Y.Mankad, learned APP for the respondent State. In response to the order passed by this Court yesterday i.e. on 22nd September, 1999, Mr.B. Y.Mankad has submitted that he has talked to the responsible officer from the Home Department and the Additional Secretary has perused the papers. After going

through the record, learned APP Mr.Mankad has submitted that appropriate order may be passed in the matter.

#. The petitioners have prayed for following reliefs;

(A) The Hon'ble Court may be pleased to quash the registration of the Offence as Crime Register No : III-205 of 1999.

(B) The Hon'ble Court may be pleased to direct Mr.R.N.Patel, Dy.S.P., Junagadh, to return the passports to the petitioners;

(C) The Hon'ble Court may be pleased to permit the petitioners to leave India, as expeditiously as possible, on suitable terms and conditions;

(D) The further investigation may be stayed during the pendency of this petition;

(E) The Hon'ble Court may be pleased to direct the police authorities to remove the finger prints and photographs from the record of "B" Division Police Station of Junagadh City and ;

(F) That any just and proper order may be passed.

#. Mr.A.D.Shah has submitted by relying upon the documents produced with the petition and the affidavit filed by Anwar Hussain Mohammed Siddeque Sidda who had reached Junagadh after alleged offence was detected and registered. This Anwar Hussain Mohammed Siddeque Sidda is a person of Indian origin holding British passport and resident of 23, St. Helens Road, Bolton, U.K. The facts stated by this witness and the averments made in the petition clearly indicate that all three petitioners are falsely implicated in the crime by the police. Without going into merits an the genuineness of the alleged complaint, Annexure-B produced with the petition is the liquor permit issued by the Indian Government to Anwar Hussain Mohammed Siddeque Sidda, is the document under which the petitioner can legitimately say and submit that liquor allegedly found from the room by the police was of this permit holder. There is sufficient evidence or circumstances on record under which the petitioners can say that he was also the occupier of the room which was searched by the police. All three petitioners are British Nationals and they are visitors having Indian origin. They and one of accused were at Junagadha for couple of hours. It is not the say of the police that

they have entered in the Country in violation of any rule or regulation. The passport of all three petitioners are taken by the Dy.S.P. (H.Q.), Junagadh Shri R.N.Patel and they are given receipts which is at Annexure-C. The respondent State has not submitted to this Court anything about the genuineness of the passport seized by the police. Mr.Shah has submitted that all the petitioners intend to leave this Country and as they have already booked for air travel, if they are detained under the pretext of the alleged litigation, then they may sustain great financial loss as well inconvenience. They may lose their job in U.K. I am also told that there is no other prosecution against any of these three accused. It is also important to note that none of the petitioner was found in drunken condition and they were not examined by the Doctor and / or police for the purpose and the search was carried out at 12.30 P.M. during noon hours. I have no reasons to disbelieve the statement made in the petition that the petitioners were scheduled to leave India on 21st September, 1999 or at the earliest thereafter. 14th October, 1999 is the last day for them, otherwise, their tickets are likely to be cancelled. Their detention may create other problems as said earlier. Whether it would be proper or not but I am inclined to pass comments that the prosecution has falsely registered the case against all three accused. The nature of offence registered against all three is not as grievous when the permit holder was already with them. But the police ought to have released all three accused forthwith when original passports were tendered to police and permit issued by the Government of India was shown. So this is case wherein, the Court should exercise its inherent powers under Section 482 of Code of Criminal Procedure and should quash the proceedings initiated by the police against all three petitioners. The prayer made in para 10(B) prayed for return of the passport also should be granted specifically but it should be simultaneously clarified that however, if Mr.R.M.Patel, Dy.S.P., Junagadh is on leave or otherwise transferred elsewhere or asked to perform duty in any other part of the district, then the officer holding of his office, shall return the passport within 24 hours from the receipt of this order.

#. The attention of this Court is also drawn by Mr.Shah to the fact that the photographs of these petitioners and also the finger prints were obtained by the police. Mr.Shah has further submitted that in view of the judgment of this Court in case of NAVROZE BAPUJI KANGA VS. THE STATE OF GUJARAT & OTHERS delivered in Special Criminal Case No ; 1643 of 1995 (Coram : D.G.Karia, J.)

on 14.12.1995, this Court has observed that unless the petitioner is proved to be guilty of the offence of house breaking, (we may say any serious offence), mere allegation in this regard made against the accused could not be sufficient to get photographs or finger print of the accused obtained and to maintain the same with the department which are taken at the time of arrest. Accepting this view, this Court is also inclined to grant the relief as prayed in para 10(E) of the prayer clause and the police authorities is directed to remove the photographs and to tear out the finger print papers as have been taken by the police during the course of investigation of the crime registered as CR No : III / 205 / 1999. Application is allowed accordingly. Bail bond stands cancelled. Bail amount of Rs.2500/- each deposited by the accused by way of personal bond be refunded to the petitioners forthwith. Rule is made absolute.

Date : 23-9-1999 [C.K.Buch, J.]

#kailash#